

Message Text

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PAGE 01 BANGKO 23970 140656Z

14

ACTION SS-15

INFO OCT-01 EA-07 ISO-00 MC-02 ACDA-05 CIAE-00 DODE-00

PM-04 H-02 INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01

SP-02 USIA-06 EB-07 NRC-05 TRSE-00 ERDA-05 COME-00

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R 140614Z NOV 75

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC 4231

C O N F I D E N T I A L BANGKOK 23970

E.O. 11652: GDS

TAGS: MASS, TH

SUBJECT: MUNITIONS CONTROL AND AGENTS' FEES

REF: A) STATE 255260; B) BANGKOK 23504

1. REVISED ASPR REGULATIONS, AS DESCRIBED PARAGRAPH 3
REFTEL A, COVERING FMS SALES, ARE NOT APPLICABLE IN
THAILAND, SINCE RTG AS MATTER OF POLICY DOES NOT PERMIT
USE OF AGENTS FOR FMS SALES.

2. AS REPORTED REFTEL B, FOR DIRECT COMMERCIAL SALES
OF DEFENSE-RELATED EQUIPMENT, IT IS CUSTOMARY TO USE
AGENTS, AND PURCHASING OFFICES NORMALLY REQUIRE THAT
DESIGNATED AGENT BE IDENTIFIED. THIS ASPECT OF PRO-
POSED ITAR REGULATIONS SHOULD THUS NOT BE BOTHERSOME
TO RTG, NOR TO ITS DEFENSE-RELATED PURCHASING OFFICES.
A REQUIREMENT THAT THE AMOUNT OF AGENT'S FEE OR
COMMISSION BE DISCLOSED WOULD, HOWEVER, BE A DIFFERENT
MATTER, MAINLY BECAUSE IT IS GENERALLY ASSUMED THAT
IN MANY CASES A PORTION OF THIS FEE GOES TO THE
PURCHASING OFFICERS IN THE FORM OF KICKBACKS.

3. IN THE PAST, THE AMOUNT OF THE AGENT'S FEE OR
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PAGE 02 BANGKO 23970 140656Z

COMMISSION HAS EVIDENTLY VARIED CONSIDERABLY. IN

MANY CASES, PURCHASES OF ARMS AND DEFENSE-RELATED EQUIPMENT ARE INITIATED BY THE PURCHASING OFFICE, WHICH PROVIDES LOCAL AGENTS WITH LISTS OF REQUIREMENTS, AND LEAVES IT TO THEM TO FIND A SOURCE OF SUPPLY. AGENT THEN LOCATES AND NEGOTIATES WITH OVERSEAS SUPPLIERS ON PRICES, TERMS, ETC. AGENTS' FEES HAVE NOT BEEN MADE PUBLIC IN THE PAST, BUT IN SOME CASES MARK-UP IS UNDERSTOOD TO HAVE BEEN EXORBITANT, WITH FINAL COST TO RTG SOMETIMES AS MUCH AS 200 TO 300 PER CENT HIGHER THAN FOREIGN SUPPLIER'S SELLING PRICE.

4. MANY FOREIGN SUPPLIERS MAINTAIN THEIR OWN EXCLUSIVE AGENTS IN BANGKOK, WHICH AGENTS DEAL DIRECTLY WITH THE GOVERNMENT PURCHASING OFFICES, OFTEN ON A BID BASIS. ONE FOREIGN SUPPLIER, WHO MAY BE TYPICAL, STATES THAT THE COMMISSION RECEIVED BY HIS COMPANY'S LOCAL AGENT IS NORMALLY NEGOTIATED ON A CASE-BY-CASE BASIS, DEPENDING ON MAGNITUDE AND NATURE OF SALE. COMMISSION MAY BE AS LOW AS ONE PER CENT OR AS HIGH AS TEN PER CENT. THE FOREIGN SUPPLIER HAS NO KNOWLEDGE OF HOW THE AGENT USES HIS FEE, BUT PRESUMABLY A PORTION MIGHT WELL GO TO RTG PURCHASING OFFICIALS.

5. THERE IS A LAW AGAINST BRIBERY IN THAILAND, BUT THERE ARE FEW KNOWN INSTANCES OF ITS HAVING BEEN ENFORCED. SECTION 144 OF THE PENAL CODE, PROMULGATED IN 1956 AND STILL IN EFFECT, PROVIDES AS FOLLOWS: QUOTE: WHOEVER GIVES, OFFERS OR AGREES TO GIVE PROPERTY OR ANY OTHER BENEFIT TO ANY OFFICIAL, MEMBER OF THE STATE LEGISLATIVE ASSEMBLY, MEMBER OF THE CHANGVAD ASSEMBLY OR MEMBER OF THE MUNICIPAL ASSEMBLY IN ORDER TO INDUCE SUCH PERSON TO DO OR NOT TO DO ANY ACT, OR TO DELAY THE DOING OF ANY ACT, WHICH IS CONTRARY TO HIS FUNCTIONS, SHALL BE PUNISHED WITH IMPRISONMENT NOT EXCEEDING FIVE YEARS OR FINE NOT EXCEEDING TEN THOUSAND BAHT, OR BOTH. UNQUOTE. SECTION 143 PROVIDES SIMILAR PENALTIES TO THE ONE WHO DEMANDS, ACCEPTS OR AGREES TO ACCEPT PROPERTY OR ANY OTHER BENEFIT IN THE CIRCUMSTANCES DESCRIBED IN SECTION 144.

CONFIDENTIAL

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PAGE 03 BANGKO 23970 140656Z

6. THE LOW ENFORCEMENT RATE OF THIS LEGISLATION HAS PROBABLY BEEN DUE PARTLY TO A LENIENT ATTITUDE ON THE PART OF PAST GOVERNMENTS, AND PARTLY BECAUSE CHARGES OF BRIBERY HAVE BEEN DIFFICULT TO PROVE. WHETHER OR NOT THE PRESENT OR FUTURE GOVERNMENTS WILL ADOPT A STRICTER ATTITUDE TOWARD CORRUPTION, THE FACT WOULD REMAIN THAT DISCLOSURE OF AGENTS' FEES

WOULD PRESUMABLY MAKE BOTH THE AGENTS AND PURCHASING OFFICERS MORE VULNERABLE TO CHARGES OF BRIBERY AND POSSIBLE COURT ACTION. IT MAY THUS BE EXPECTED THAT MANY WOULD TURN TO NON-U.S. SUPPLIERS WHEREVER POSSIBLE IN ORDER TO AVOID HAVING TO MAKE SUCH DISCLOSURES. THIS WOULD OF COURSE PLACE AMERICAN COMPANIES AT A COMPETITIVE DISADVANTAGE UNLESS THEY WERE ABLE TO TURN TO THIRD COUNTRY SUBSIDIARIES AS A SOURCE OF SUPPLY.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ARMS, POLICIES, BRIBERY, MUNITIONS CONTROLS
Control Number: n/a
Copy: SINGLE
Draft Date: 14 NOV 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BANGKO23970
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750396-0708
From: BANGKOK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19751143/aaaabmmt.tel
Line Count: 125
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 75 STATE 255260, 75 BANGKOK 23504
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 23 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 JUL 2003 by ShawDG>; APPROVED <24 JUL 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MUNITIONS CONTROL AND AGENTS' FEES
TAGS: MASS, TH
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006